Application No.: 10/776,619
Amendment dated: July 19, 2005
Reply to Non-Compliant Amendment dated: July 7, 2005

REMARKS/ARGUMENTS

Claims 1-19 are pending in the application. Claims 1-19 are rejected. Claims 1, 7, 10, 12, and 15 have been amended.

The claims have been provided with the proper status identifier as requested in the Notice of Non-Compliant Amendment under 37 C.F.R. §1.121.

Claims 7-9 and 15-19 were rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter. Claims 10-14 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite. Claims 7-9 were rejected under 35 U.S.C. §102(b) as being anticipated by product recall. Claims 7-8 and 17-19 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,370,454 to Moore (hereinafter "Moore"). Claims 1-19 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent Application No. 2001/0056359 to Abreu (hereinafter "Abreu"). Claims 10-14 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,714,893 to Busche et al. (hereinafter "Busche"). Claims 1-6, 15, and 16 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Application No. 2004/0267608 to Mansfield Jr. (hereinafter "Mansfield"). Claims 15 were rejected under 35 U.S.C. §103(a) as being unpatentable over Busche. Claims 10-14 were rejected under 35 U.S.C. §103(a) as being unpatentable over the "Tread Act" of Congress (Public Law 106-414-Nov. 1, 2000) (hereinafter "Tread Act"). Claims 17-19 were rejected under 35 U.S.C. §103(a) as being unpatentable over product recall. Claims 17-19 were rejected under 35 U.S.C. §103(a) as being unpatentable over section 12 of the Tread Act.

Claim Rejections Under 35 U.S.C. §101

Claims 7-9 and 15-19 were rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter. Claims 7 and 15 have been amended to clarify that the systems and method use a computer, bringing the claims within the realm of patentable subject matter.

Claims 17-19 were rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter. Specifically, the Office Action states: "The claims have a scope that includes an intangible medium, such as a carrier wave (a medium) that contains instructions to do what has been claimed." This is an insufficient basis on which to reject a claim. To be statutory under § 101, a claim need only recite subject matter that is tangible, concrete and useful. *See In re Alappat*, 33 F.3d 1526, 1544 (Fed. Cir. 1994).

The preamble as written for the claims is perfectly within the parameters of patentable subject matter as recognized by the Patent Commissioner beginning in *In re Beauregard*, 53 F.3d 1583 (Fed. Cir. 1995). Interestingly, the Examiner's analysis would apply with equal force to possibly thousands of other Beauregard claims that have been allowed by the Office in the last decade. This analysis clearly is incorrect.

Claims 17-19 are directed to computer readable medium on which program instructions are stored. "Medium" by its plain meaning refers to "an intervening substance through which something else is transmitted or carried on." *See*, http://dictionary.reference.com/search?q=medium. The claim refers to a computer readable substance, which clearly recites tangible subject matter.

Finally, Applicant notes that the Patent Office has recognized that even claims that recite carrier waves can be allowable under §101. In training materials for the Guidelines, the Patent Office suggested a possible claim to a propagated signal carrying a program. In its example, the program both compressed and encrypted data. This claim was:

A computer data signal embodied in a carrier wave comprising:

a. a compression source code segment comprising [the code]; and

b. an encryption source code segment comprising [the code].

See, "Examination Guidelines For Computer-Related Inventions," United States Patent and Trademark Office, 37, Claim 13 (1996). In these guidelines, the Office determine that this type of claim was allowable under §101. Thus, the fact that a claim recites a carrier wave is not fatal for §101 purposes. Applicants respectfully request withdrawal of the §101 rejection.

Claim Rejections Under 35 U.S.C. §112

Claims 10-14 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite. The Office Action states that, while the preamble of claim 10 is directed to a recall notification method, the body does not recite anything about recall notification. This statement is incorrect. Both an automated notification agent and recall repository data are recited in the body of the claims. When these elements are read in context a recall notification method is clearly disclosed. The Office Action also states that the element "generating a report to a member" of claim 12 is unclear. Claim 12 has been amended.

Claim Rejections Under 35 U.S.C. §102

Claims 7-9 were rejected under 35 U.S.C. §102(b) as being anticipated by product recall. Claim 7 has been amended to clarify that this is a method for computerized product recall. Additionally, traditional product recall does disclose generating an alert if an instance of product performance that fails a benchmark relates to a previously undetected product defect. Thus, an element of claims 7 is not disclosed. Therefore, claims 7, and by their dependency claims 8-9, are not anticipated.

Claims 7-8 and 17-19 were rejected under 35 U.S.C. §102(b) as being anticipated by Moore. Moore discloses a method and apparatus for the maintenance of mechanized equipment such as an automobile (*See* Abstract).

Moore fails to teach or suggest determining whether the instance relates to a previously undetected product defect, as recited in claims 7 and 17, nor does the Office Action contend that Moore does. In claiming anticipation of claims 8 and 18, which build upon this element, the Office Action states: "Claim 18 is anticipated if the problem is a new problem (not detected previously). Because a new problem inherently has not been detected previously, the specifics of claim 18 are not required." Thus, the Office Action ignores this element of claims 7 and 17, and by extension claims 8 and 18.

Moore does not teach or suggest determining whether the instance relates to a previously undetected product defect because Moore is dealing with a malfunction indicator for a single device, similar to the engine light on a car, rather than detecting defects in a group of products.

Thus, an element of claims 7 and 17 is not disclosed by Moore. Therefore, claims 7 and 17, and by their dependency claims 8-9 and 18-19, are not anticipated by Moore.

Claims 1-19 were rejected under 35 U.S.C. §102(b) as being anticipated by Abreu. Abreu discloses an automated system and method for communicating product information to consumers through a central computer using a distributed computer network.

Abreu fails to teach or suggest a recall operations system, storing data representing return, repair and service procedures to be followed to process a recall of defective products, as recited in claim 1 as amended, nor does the Office Action contend that Abreu does. In claiming anticipation of claim 1, the Office Action states: "The recall operations system and recall repository is the part of the system that stores the desired manner of communication for the consumer (email, phone, etc.)." Return, repair, and service procedures are not the manner of communication for the consumer. Thus, an element of claim1 is not disclosed by Abreu. Therefore, claim 1, and by their dependency claims 2-6, are not anticipated by Abreu.

Abreu fails to teach or suggest determining whether the instance relates to a previously undetected product defect and generating an alert if it is, as recited in claims 7 and 17.

The Office Action cites a passage from Abreu that states:

> The GPI system 1 is also designed to acquire information from the user 90 which may be significant from a warning or recall standpoint. The GPI system 1 uses biological variables to determine if a certain UPI product has been consistently and temporally associated with an abnormal biological variable. In the case that hundreds of users using a certain drug PPS transfer biological variables consistent with abnormal heart rate, then the data meet the criteria for potential harmful effect of the drug PPS. This information can then, for example, be transferred to the RIS 60 as "drug PPS potentially implicated with abnormal heart rate". In this scenario the GPI system 1 acts as an auxiliary in the

> detection of harmful products. The same approach applies to the detection of a certain plant number or lot numbers causing widespread illness or injury. The information thus can be used for locating plants for inspection. The system 1 can also identify contaminated food before an outbreak occurs. The users can transmit information to the GPI system 1 about their symptoms and comments on the product such as labeling, appearance, questionable ingredients, and the like. When a certain number of users report similar symptoms after ingesting the same food, the GPI system 1 identifies a potential outbreak. The system GPI 1 then can transfer this information back to the RIS 60.

(Abreu, Paragraph 251).

In other words, Abreu identifies a potential problem if the number of incidents reaches a certain level. It does not issue an alert on the initial occurrence of an incident. Thus, an element of claims 7 and 17 are not disclosed by Abreu. Therefore, claims 7 and 17, and by their dependency claims 8-9 and 18-19, are not anticipated by Abreu.

Abreu fails to teach or suggest regulating the terminal's access to recall repository data based upon the terminal's classified audience member type, as recited in claims 10 and 15.

The Office Action cites a passage from Abreu that states:

> The information about products (codes and/or names) being used and stored in the central server 10 (or GPI), can be accessed only by the users of such products. They preferably are required to enter a proper identification and password. To further assure the confidentiality of the information about products being used, biometric identification devices such as iris scanners, retinal scanners, fingerprint readers, voice recognition systems, and the like can be used to verify the identity of the user before accessing the database of the central server 10 or using the IECLD 40. The biometric data system also can be used by users who are visually or hearing impaired. The central server 10 (or GPI) can continuously receive and/or acquire updates on products, with the new information about the harmful products immediately being transmitted to the unique user of such harmful products. A menu-type message can be generated with the most critical hazard placed first and with a decreasing order of severity presented when the message/warning is transmitted. Certain information, such as the cardiac effects of products being used, can be stored and thus the user has the option to store and index the

> particular information in the database of the central server 10 (or GPI) under his/her username, which enables the user to review products which are or were used that affect the heart, and this information can be transferred to the user's doctor as well.

(Abreu, Paragraph 142).

In other words, only product users gets to access the product information. Abreu does not distinguish between members of the audience, sending information to only product users. Abreu states:

> This system helps companies reduce their exposure to the financial disaster that may occur as a result of publicly announced recalls through the media as previously explained. Moreover, the companies and government agencies avoid the significant costs associated with conventional printed, televised and audio recall and warning about potentially harmful products.

(Abreu, Paragraph 242).

Thus, only one class of audience member exists and an element of claims 10 and 15 is not disclosed by Abreu. Therefore, claims 10 and 15, and by their dependency claims 11-14 and 16, are not anticipated by Abreu.

Claims 10-14 were rejected under 35 U.S.C. §102(e) as being anticipated by Busche. Busche discloses an enhanced concern indicator failure prediction system to predict possible product failures with automatic notification of people as well as systems (*See* Abstract).

Busche fails to teach or suggest regulating the terminal's access to recall repository data based upon the terminal's classified audience member type, as recited in claim 10.

The Office Action cites a passage from Busche that states:

Narrowcasting 440 distributes triggering data to subscribers. Narrowcasting is the

> technique of distributing pertinent information to the precise destinations that require this information. As contrasted with simply broadcasting information, this technique avoids overloading the destination with information that not immediately useful. For example, a tire distributor may desire to see failure information relating to his tire brands but would not be interested in failure information relating to the brake system. Subscribers may be systems 450, such as pagers, e-mail, or other automated systems. Subscribers may also be people. For example, a person may monitor for failures at user dashboard 452.

(Busche, Column 7, lines 12-24).

In other words, the user gets to decide what aspects of the recall information the user may access, meaning that such access is unregulated. Further, the user is either a subscriber or not a subscriber, i.e. a member of the audience or not a member of the audience. Busche does not distinguish between members of the audience. Thus, elements of claim 10 are not disclosed by Busche. Therefore, claim 10, and by their dependency claims 11-14, are not anticipated by Busche.

Claims 1-6, 15, and 16 were rejected under 35 U.S.C. §102(e) as being anticipated by Mansfield. Mansfield discloses system for determining customer identifiers associated with purchase of product items which are recalled includes a computer database management system and network (*See* Abstract).

Mansfield fails to teach or suggest an early warning system, responsive to product performance data, to detect a pattern of product defects therefrom and generate an alert, as recited in claim 1.

Mansfield states:

> In step 210, a manufacturer decides to recall. Preferably, the manufacturer determines the specification of the recall. Typically, the recall specification defines at least one

> product UPC, identifiable product items, geographic regions, time periods (*e.g.*, date ranges), retailers, and specific stores. The recall specification defines the scope of the recall and any data that accomplishes this goal may be used for this invention. It should be noted that identification of the product without any other limitations would indicate a general recall of all outstanding product items for that product.

(Mansfield, Paragraph 0024).

In other words, a manufacturer decides to perform the recall. No mention is made of a system that detects a pattern of product defects and generates an alert. Thus, an element of claim1 is not disclosed by Mansfield. Therefore, claim 1, and by their dependency claims 2-6, are not anticipated by Mansfield.

Mansfield fails to teach or suggest regulating the terminal's access to recall repository data based upon the terminal's classified audience member type, as recited in claim 15 as amended, nor does the Office Action state that it does. Therefore, claim 15, and by its dependency claim 16, are not anticipated by Mansfield.

Claim Rejections Under 35 U.S.C. §103(a)

Claims 15 were rejected under 35 U.S.C. §103(a) as being unpatentable over Busche. As stated above, Busche does not teach or suggest classifying the individual participants as one of a predetermined number of audience member types. The user is either a subscriber or not a subscriber, i.e. a member of the audience or not a member of the audience. Busche does not distinguish between members of the audience. Thus, elements of claim 15 are not disclosed by Busche. Therefore, claim 15, and by its dependency claim 16, are not anticipated by Busche.

Claims 10-14 were rejected under 35 U.S.C. §103(a) as being unpatentable over the Tread Act. The Tread Act does not teach or suggest establishing a session between an automated notification agent of a product producer and a terminal. The Tread Act strictly refers to communications between the government and manufacturers. The government is not a product producer.

Claims 17-19 were rejected under 35 U.S.C. §103(a) as being unpatentable over product recall. Traditional product recall does not disclose generating an alert if an instance of product performance that fails a benchmark relates to a previously undetected product defect. Thus, an element of claims 17 is not disclosed. Therefore, claims 17, and by their dependency claims 18-19, are not obvious.

Claims 17-19 were rejected under 35 U.S.C. §103(a) as being unpatentable over section 12 of the Tread Act. The Tread Act does not disclose generating an alert if an instance of product performance that fails a benchmark relates to a previously undetected product defect. Thus, an element of claims 17 is not disclosed. Therefore, claims 17, and by their dependency claims 18-19, are not obvious.

For all the above reasons, the Applicant respectfully submits that this application is in condition for allowance. A Notice of Allowance is earnestly solicited.

The Examiner is invited to contact the undersigned at (408) 975-7500 to discuss any matter concerning this application.

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The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. §1.16 or §1.17 to Deposit Account No. **11-0600**.

Respectfully submitted,

KENYON & KENYON

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